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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

In re:

HPE Transportation LLC,

Debtor.

)
) Chapter 11
)

) Case No. 21-50650-FJS
)
)
)
)

**SECURED CREDITOR AMERICAN FINANCIAL
CENTER, INC., DBA OCEAN CAPITAL FACTORS'
MOTION FOR RELIEF FROM THE STAY**

Secured Creditor American Financial Center, Inc., dba Ocean Capital Factors, a California corporation ("AFCI"), moves the Court, pursuant to 11 U.S.C. § 362(d)(1) and Federal Rules of Bankruptcy Procedure ("FRBP") 4001 for the entry of an order granting AFCI relief from the automatic stay under 11 U.S.C. § 362(a), retroactive as to August 12, 2021 (the, "Petition Date"), so that it may exercise its non-bankruptcy law rights and remedies with respect to its Accounts, as that term is defined under the Uniform Commercial Code (the "UCC"), and its secured Collateral described as follows:

All of Debtor HPE Transportation LLC's ("Debtor" or "HPE") Accounts, Chattel Paper, Inventory, Equipment¹, Instruments, Investment Property/Securities, Deposit Accounts, Reserve Account, Documents, and General Intangibles.

¹ AFCI does not seek to interfere with duly perfected, higher priority lien rights held by equipment lessors or equipment financiers as to HPE's titled trucks and trailers.

AFCI is the owner of the Accounts, and it holds a first-priority lien in all of Debtor's Accounts, Chattel Paper, Inventory, Equipment, Instruments, Investment Property/Securities, Deposit Accounts, Reserve Account, Documents, and General Intangibles. The value of these assets is vastly insufficient to pay down all of Debtor's indebtedness to AFCI. AFCI's only real source of immediate recovery on its Collateral is the Accounts, whose value decreases the longer they remain uncollected.

Their value is further threatened by actions taken by the Debtor, without authority to use cash collateral, since the filing of this bankruptcy. Debtor has caused its counsel to send a notice directing a customer to pay Accounts to Debtor on account of this bankruptcy. The notice violates AFCI's rights under the parties' pre-petition factoring agreement, which gave AFCI the sole right to collect the Accounts. Debtor's conduct also threatens a fraud against AFCI who, pre-petition, advanced money to Debtor to purchase the Accounts only to now find Debtor attempting to collect the same Accounts itself. AFCI does not know yet if Debtor has successfully collected any Accounts post-petition.² Debtor's counsel assures AFCI that Debtor has not. However, Debtor's conduct is certain to cause confusion among customers who received the notice and who owe payment on the outstanding pre-petition Accounts. When customers are confused about whom to pay, they pay slowly or not at all. It may be some time before we realize the full impact of the damage to the Accounts and to AFCI's Collateral. Since AFCI is not adequately protected, relief from stay should be granted without delay.

In support of its Motion, AFCI hereby incorporates all of the arguments in the *Secured Creditor American Financial Center, Inc., dba Ocean Capital Factors' Memorandum of Points and Authorities in Support of Its Motion for Relief from the Automatic Stay* filed contemporaneously herewith.

² In the last week, AFCI received an odd email from an HPE customer asking that HPE remove a legend that appears on a pre-petition invoice of HPE instructing the customer to issue payment to AFCI as the assignee of the Accounts. It is unclear why a customer would be concerned about such a legend, unless they were trying to reconcile conflicting payment instructions for the invoice.

WHEREFORE, for the reasons stated in the *Secured Creditor American Financial Center, Inc., dba Ocean Capital Factors' Memorandum of Points and Authorities in Support of Its Motion for Relief from the Automatic Stay*, AFCI requests that the Court grant this Motion.

Dated: August 30, 2021

Respectfully submitted,

/s/ Jae Won Ha

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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2021, a copy of the foregoing Motion was filed and served via the Court's Electronic Case Filing System on all parties receiving such notification and sent by first-class U.S. mail, postage prepaid to:

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